

Summary of LB 464

Sec 1: Amends section 14-607, directing police officers to submit their reports to the “appropriate prosecuting authority” rather than “city prosecutor” to harmonize with the changes to juvenile court original jurisdiction.

Sec 2: Amends section 24-517 concerning county court jurisdiction to conform to changes made to juvenile court jurisdiction

Sec. 3: Adds data collection requirements for the State Court Administrator to include comprehensive data tracking on juveniles involved in the adult and juvenile court systems.

Sec 4: Amends section 29-1816, which lays out when a person can be arraigned in county court to harmonize with changes to juvenile court’s exclusive original jurisdiction.

All cases involving juveniles under the age of 14, excluding traffic offenses must be filed and heard in juvenile court.

The juvenile court continues to have exclusive original jurisdiction over misdemeanors and infractions, other than traffic offenses, committed by juveniles under the age of 16. This is now expanded to include exclusive original jurisdiction over 16 year olds beginning January 1, 2015, and to include 17 year olds beginning January 1, 2017.

However, misdemeanors or infractions involving 16 and 17 year olds, which originate in juvenile court, may be transferred to adult court at the request of the prosecutor, if the prosecutor sustains his or her burden at the hearing on their motion to transfer.

Also, provides that all Class IV and IIIA felonies cases involving a juvenile be originally filed in juvenile court, with the option to transfer to adult court. This begins January 1, 2015 and there is no phase-in as with misdemeanors.

The prosecutor retains discretion on whether to file in juvenile or adult court in all other cases.

This section also lays out the process whereby a juvenile can request a transfer of a case directly filed in adult court to juvenile court.

Sec. 5: Specifically provides that the Office of Probation Administration (OPA) is a child-placing agency for purposes of allowing the Nebraska Department of Health and Human Services (NDHHS) to contract with OPA to draw down federal Title IV-E funds in juvenile justice cases.

Sec. 6: Incorporates Section 5 into the Nebraska Probation Administration Act

Sec. 7: Amends the Juvenile Code definition of Staff secure juvenile facility to conform to the changes made in LB 561 under section 83-4,125.

Sec. 8: To assist in clarity, it amends section 43-247, which lists all cases over which a juvenile court has jurisdiction. The breakdown of which cases fall into juvenile court's exclusive original jurisdiction as opposed to its concurrent original jurisdiction is moved to Section 9.

Sec. 9: Addresses the language that was stricken in Section 8. It describes the juvenile court's exclusive original jurisdiction, concurrent original jurisdiction, and which cases the prosecutor can request transferred to county or district court.

Any case involving violation of a misdemeanor, an ordinance, or a felony concerning a juvenile who was under fourteen years of age at the time of the offense must be filed and heard in juvenile court. This excludes traffic offenses.

Any case involving a violation of a misdemeanor or an ordinance concerning a juvenile who was under 16 years of age at the time of the offense must be filed and heard in juvenile court. This excludes traffic offenses and is what is currently provided under the current law.

Any case involving a violation of a misdemeanor or an ordinance concerning a juvenile who was 16 or 17 years of age at the time of the offense must be filed in juvenile court, but the prosecutor can motion to transfer the case to county or district court. This excludes traffic offenses. This section will phased in to include 16 year olds beginning January 1, 2015 and 17 year olds beginning January 1, 2017.

Any case involving a violation of a Class IV or IIIA felony concerning a juvenile who is 14, 15, 16 or 17 must be filed in juvenile court, but the prosecutor can motion to transfer the case to county or district court.

The prosecutor retains the discretion on whether to file in juvenile or adult court for any case involving a traffic offense or a violation of a Class I, IA, IB, IC, ID, II or III felony, if the juvenile is 14, 15, 16, or 17 years of age. The juvenile retains the right to request a transfer to juvenile court if the prosecutor elects to file in adult court.

This section does not purport to amend the juvenile court's jurisdiction in regards to cases filed pursuant to subdivisions (3) - (10) of section 43-247.

Sec 10: Amends section 43-247.01 in regards to facilitated conferencing. It provides that in any juvenile case, the court may provide the parties with the opportunity for facilitated conferencing or mediation. This includes, but is not limited to: prehearing conferences; family group conferences; expedited family group conferences; child welfare mediation; permanency prehearing conferences; termination of parental rights prehearing conferences; and juvenile victim-offender dialogue. Funding and management for such services will be part of the office of the State Court Administrator.

Sec 11: Transfers \$450,000 from General Funds from Health and Human Services budget to the office of the State Court Administration to organize and pay for facilitated conferencing.

Sec 12: harmonizes language, no substantive changes.

Sec 13: Changes were made to address confusion regarding who arranges and pays for pre-adjudication evaluations for juvenile cases that arise under subdivisions (1), (2), (3)(b) and (4). This makes it clear that probation arranges the pre-adjudication evaluations, deletes the previous payment language, and references Section 21, which describes the payment responsibilities for the counties, OPA and NDHHS. It also amends 43-258 to allow for evaluations to be submitted electronically and provides that the court is to provide copies of the evaluation to the legal parties if the evaluation will be relied on in court.

Sec 14: To provide clarity, the description of what must be contained in a juvenile court petition was moved from 43-274 to its own section. The requirements were changed slightly to include the juvenile's month and year of birth.

Sec 15: Harmonizes "juvenile court petition" language, no substantive law changes.

Sec 16: Amends section 43-274 removing the first subdivision to section 14 and summarizes existing law. Subsection 5 of this section, lays out the procedure for a motion to transfer to adult court. It further provides that a juvenile is to be represented by counsel at a transfer hearing and the burden of proof for the prosecution is a preponderance of the evidence. Further requires the juvenile court to schedule the hearing within 15 days of the filing of the motion and rule on the motion within 30 days after the hearing.

Sec 17: Amends the criteria under 43-276 that the prosecutor is to consider when determining whether to file and where to file a petition involving a juvenile. These are the same criteria for judges to consider in motion to transfer. The factors were updated to remove repetitive or unnecessary language and to add considerations regarding adolescent brain development.

Sec 18: Clarifies section 42-281, which provides that OPA is responsible for arranging evaluations following adjudications under subdivisions (1), (2), (3)(b) & (4) of section 43-247. Amends the section to allow for evaluations for juveniles who are not in detention to be returned within 30 days, instead of 21 days. Further, requires that copies of pre-disposition reports and evaluations are provided to the legal parties.

Sec 19: Provides that legal parties are to have copies of case plans for juvenile cases filed under subdivision (3) (a) or (c) of 43-247.

Sec 20: The amendments to 43-286 clarify the payment structure for juvenile justice cases, clarify the process due prior to commitment to the state's YRTCs, and clarify the re-entry process from the state's YRTCs. First, the amendment strikes the language regarding payment sources, and references Section 21, which lays out the payment responsibilities for the counties, OPA and NDHHS. Second, the amendments clarify the process that is due prior to a court order committing a juvenile to the state YRTC's, and provides that the prosecutor's burden of proof is a preponderance of the evidence. LB 561 stated what needed to be found prior to a commitment, but did not outline the necessary process. The process includes a duty upon the courts to immediately notify OJS of a juvenile's commitment to a YRTC and clarifies OJS's responsibility to transport a juvenile to and from a YRTC. Third, the reentry process is modified to make clear that that OJS is required to notify all parties of pending discharge of a juvenile from a YRTC 60

days prior to discharge and again in every case not less than thirty days prior to discharge. Upon notice of the pending discharge the court shall set a continued disposition hearing in anticipation of reentry. OJS shall provide a copy of the reentry plan to the court and all parties. If the parties stipulate to the reentry plan, a continued disposition hearing is not necessary. Finally, it makes clear that OJS is responsible for transportation of the juvenile to and from the YRTCs.

Sec 21: To alleviate confusion, consolidates all the sections regarding payment sources for juvenile justice cases to one section.

The county is responsible for pre-adjudication detention, detention alternatives, treatment, voluntary services and transportation, except for juveniles who are already on juvenile probation under another docket. Further, OPA continues to arrange and pay for pre-adjudication evaluations and pre-adjudication placements that are not detention.

OPA is responsible for pre-adjudication costs for juveniles who are already on probation and for post adjudication costs of detention, services, detention alternatives, voluntary services and transportation.

OJS/NDHHS is responsible for costs from the time a juvenile is committed to a state YRTC until such time as the juvenile is discharged by OJS. This includes detention costs prior to placement and transportation to and fro the YRTCs.

In child welfare cases, the payment responsibilities remain the same. Further, payment of costs of medical expenses for juveniles is provided in 43-290.

Sec. 22: Amendments to 43-290 are not substantive and are only to harmonize language.

Sec 23: As, OPA is designated a child-placing agency, this section gives OPA ‘change of placement’ authority for lateral or less restrictive placements in juvenile justice cases. The language is similar to ‘change of placement’ authority which OJS previously held prior to LB 561.

Sec 24: Amends Section 43-2,106.03 to harmonize language. No substantive changes.

Sec 25: This section concerns confidential records and amends section 43-2,108 to allow the prosecutor and juvenile’s attorney to have copies of predisposition reports and evaluations prior to the hearing.

Sec 26: Simply makes new sections a part of the juvenile code. No substantive law changes.

Sec 27: These amendments harmonize the language regarding OJS custody. Further requires OJS to utilize evidence-based practices and report on their use of evidence-based practices by January 15, 2016. The section provides the minimum requirements of the report.

Sec 28: To provide clarity, the language regarding payment of detention costs is stricken and replaced with a reference to Section 21, where the payment responsibilities are delineated.

Sec 29: Amends Section 43-425 to provide that a juvenile's GAL is a part of the Community and Family Reentry Process created under LB 561.

Sec 30: The amendments to the Community-based Juvenile Services Aid Program clarify which programs can be funded, and give the counties greater flexibility to use the grant funds. Counties may now use the funds for preexisting programs that are aligned with evidence-based practices and payment of transportation costs to and from placements.

Sec 31: Appropriates \$5 million dollars to the Community-based Juvenile Services Aid Program.

Sec 32: Amendments to section 43-2102 are to harmonize language, make reference to Section 21 in regards to payment sources and strikes previous language regarding payment sources.

Sec 33: No substantive changes to the law. Amendments are to harmonize the proposed changes as they relate to the Children's Commission.

Sec. 34: Amends section 79-209, excessive absenteeism is amended, and removes the mandatory referrals to county attorneys after a juvenile misses 20 days of school. Schools may still refer cases to county attorneys after 20 absences, but this amendment revises the process schools must follow to address absenteeism prior to referral. Failure by the schools to document collaborative interventions made to address absenteeism is a defense to prosecution under Neb. Rev. Stat. 79-201 and a defense in both educational neglect and truancy under the Juvenile Code.

Sec. 35: Amends section 79-527.01 to create the Council on Student Attendance. The members, appointed by the State Board of Education, are tasked with reviewing school district absenteeism policies and develop recommendations to reduce incidents of absenteeism.

Sec. 36: The responsibilities of the Director of Juvenile Diversion Programs, created under LB 561, are amended to provide counties flexibility to implement evidence-based practices, principles and programs.

Sec 37: Sections 3, 4, 8, 9, 16, 17 and 38 become operative January 1, 2015. The other sections to become operative three calendar months after adjournment of the session.

Sec. 38 & 39: Lays out the sections as they relate for the revisor of statutes.